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May 24, 2023

BY ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19
Civ. 660 (MKB)

Dear Chief Judge Brodie:

We write on behalf of the Federal Defenders to provide an update pursuant to the Court's order dated April 28, 2023.

Issues with Legal Mail. A Federal Defenders paralegal attempted to hand deliver legal mail to MDC on May 23, 2023, and was told the institution could not accept the mail due to the envelope size (11" x 14"), although the same paralegal had successfully delivered envelopes of this size in the recent past. This refusal prevented the client from accessing important discovery one week before the start of his trial. MDC Legal has committed to investigating this incident and Plaintiff looks forward to further information.

In-person visiting. Plaintiff appreciates MDC's continued efforts to address a number of ongoing issues raised in mediation sessions concerning in-person visiting. However, the defense bar continues to experience long wait times, with attorneys reporting instances of wait times of up to two hours just to gain entry to the visiting rooms. Once there, attorneys spend additional time waiting for their clients to be brought down. Defendants report that these delays and interruptions result from a range of issues, including short staffing, one-off security issues, miscommunications between MDC staff members, and a lack of space in the visiting rooms. Plaintiff continues to work with MDC and the mediation team to find solutions to address these issues, which have significant negative impacts on legal access.

Additionally, Plaintiff appreciates Defendants' ongoing work to address concerns related to a series of incidents involving the detention of counsel in SHU and the SAMs unit, Unit 84. *See* ECF No. 375. Specifically, Defendants agreed to install a phone in Unit 84, which allows an attorney to contact the MDC control center if the attorney is unable to obtain a response by staff

to the buzzer located in the visiting room. Defendants have informed Plaintiff that the institution is working to install similar phones in the SHU visiting rooms, and we look forward to further updates on this project.

Short Staffing and Miscommunication at MDC. Short staffing at MDC has been and continues to be a source of delays in legal visits, as well as miscommunication and confusion among MDC staff regarding legal visiting procedures. Defendants confirm that short staffing is a key factor affecting these issues. For example, on May 17, 2023, CJA lawyer Richard Willstatter arrived at the East building at 9:50 am intending to visit his female client, and was instructed by a MDC legal staff member to go to the West building to see his client there. He went to the West building, got a locker to store his things, submitted his form to the lobby officer, was processed through security, and waited for almost an hour. The lobby officer then instructed him to go back to the East building. After collecting his belongings and returning to the East building, Mr. Willstatter had to be reprocessed and did not arrive in the visiting room until 11:20 am. While plaintiff appreciates MDC's continued work with Plaintiff and the mediation team to improve miscommunication issues within the institution that negatively impact legal access, there continues to be a disconnect between the efforts of MDC leadership and the day-to-day actions of staff. Plaintiff looks forward to continued updates on Defendants' efforts to address short staffing issues, particularly considering the historical precedent of summer staffing issues.

VTCs and telephone access. The parties have continued to troubleshoot issues relating to legal VTCs and telephone calls. *See* ECF 363 at 1; ECF 368 at 1; ECF 375 at 3. The Federal Defenders continue to receive reports relating to broken phones, broken VTC units, and audio problems in connection with certain remote visits. For example, Federal Defenders call logs indicate a series of audio issues related to the screen protectors placed by the institution on VTC machines. MDC has attempted to mitigate this issue by providing headphones to inmates, but there continue to be reports of audio obstruction. Plaintiff appreciates the steps the institution has taken to address technical problems as they arise. Plaintiff will continue to identify and communicate the specific calls and units on which these problems occur to MDC legal and the mediation team.

Plaintiff continues to engage with MDC to address situations in which an attorney does not receive a scheduled legal telephone call or VTC. Plaintiff appreciates Defendants' acknowledgment that it is the institution's responsibility to reschedule calls and VTCs cancelled by the institution due to unforeseen circumstances. However, the defense bar continues to report instances of calls and VTCs cancelled and not rescheduled by MDC. For example, on May 8, 2023, the MDC cancelled a scheduled legal call, citing an "institutional emergency" and instructing the defense attorney to reschedule the call for later in the week. The parties continue to work through ways of improving communications between the MDC and legal counsel in the event of cancellations in the mediation process.

Finally, although it was our understanding that the installation of a permanent VTC unit in East SHU would be completed by May 1, 2023, Defendants have reported a delay due to Central Office connectivity issues. We hope that we are able to report completion of that project before the parties submit their next status reports.

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3

We thank the Court for its continued attention to these important issues.

Respectfully submitted,

/s/ Sean Hecker
Sean Hecker

cc: Counsel of Record (by ECF)
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